IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2292 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANIL KAPOOR, MANAGING DIRECTOR

Versus

POORNIMABEN MAHESHCHANDRA PROPRIETOR

Appearance:

MR KS JHAVERI for Petitioners

MR KK TRIVEDI for Respondent No. 1

MR KP RAVAL, APP for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 15/02/2000

ORAL JUDGEMENT

Present petitioners-original accused have filed the present Misc. Cri. Application for quashing and

setting aside the complaint filed by the present respondent No.1 before the learned Judicial Magistrate (First Class), Court No.3 at Surat under sections 406, 114, etc. of Indian Penal Code which has been registered as Criminal Case No.3577 of 1998 on 22-5-1998 in which process has been issued by the court after recording the verification of the complainant-present respondent No.1.

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#. I have heard Mr.K.S.Jhaveri, learned counsel for the petitioners, Mr.K.K.Trivedi, learned counsel for the respondent No.1 and Mr.K.P.Raval, learned APP for the respondent No.2-State.

#. Mr.Jhaveri has mainly argued that this complaint which has been filed by the present respondent No.1 against the petitioners under Sec.138 of Negotiable Instruments Act is nothing but as a result of counterblast of the Criminal Case No.797 of 1996 filed by the company wherein present petitioners are working as Managing Directors before the Judicial Magistrate (First Class) at Pune on 9-7-1993 in which process has been issued and present respondent No.1-original complainant appeared before that court in July, 1996 and thereafter, on 25-5-1998, criminal complaint in question has been filed by the present respondent No.1 before Judicial Magistrate (First Class), Court No.5, Surat. Mr. Jhaveri has drawn my attention towards page 1 of the complaint wherein as per the say of the respondent No.1, she is entitled to file complaint in question under the alleged agreement dated 4-1-1996, but present petitioners-original accused have nothing to do with the said agreement. He has also argued that the alleged agreement is not an agreement at all, but it is clear from of the letter dated 4-1-1996 that it is a suggestion made by one Mr.K.K.Bhasin to the respondent No.1-complainant.

#. Learned counsel for the respondent, Mr.K.K.Trivedi has mainly argued that ingredients of offence have been clearly made out in the complaint in question and there is prima-facie evidence for issuing process against the present petitioners and, therefore, court below has rightly issued the process and in that view of the matter, this court should not interfere with it under Sec.482 of Code of Criminal Procedure. He has relied upon a case reported in 1960 S.C. 866 and read out para 6 of the said decision wherein the Apex Court has categorically observed the circumstances wherein High Court can interfere. In para 6, it is held as under:

"In exercising its jurisdiction under Sec.561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.

Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under S.561-A in the mature of quashing criminal proceedings, and that is the effect of the judicial decisions on the point."

It has been further held in the said decision by the Apex Court that it is the complaint and the documents annexed with the complaint which are required to be seen while deciding the question under Sec.482 of Cr.P.C. In the very same judgment, the Apex Court has also held that Court can interfere even for the purpose of preventing the abuse of the process of law.

#. Mr.Trivedi has also relied upon another judgment reported in 1999 (3) S.C.C. 259. The Apex Court in the above judgment has held at head note `A' as under:

"If averments in complaint prima-facie make out a case for investigation the High Court cannot quash the complaint merely because one or two ingredients of the offence have not been stated in detail - Quashing of complaint on ground that the complaint disclosed a commercial or money transaction not justified."

#. I am in respectful agreement with the law laid down by the Hon'ble Supreme Court in the above reported judgment.

#. Whereas learned counsel for the petitioner has relied upon a case reported in JT 2000(1) SC 360 wherein the Apex Court has held in paras 13 and 14 as under:

"In the circumstances of the case in hand invoking the jurisdiction of criminal court for allegedly having committed offences under Sections 406/420 IPC by the appellants is certainly an abuse of the process of law. A

> complaint under Section 138 of the Negotiable Instruments Act has already been filed by the complainant. There is no allegation of any corrupt practice by any of the accused as if they duped the Finance Company in parting with the amount of Rs.50,00,000/-. As normally understood business of a finance company is to invite deposits, pay interest on that and also to give loans and earn interest. In that case it is essentially a commercial transaction. There is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed."

So, even as per the Apex Court, this Court can interfere under Sec.482 of Cr.P.C. in a given circumstance as stated in the above reported judgment. But facts remain that present respondent No.1-original complainant had issued cheque in favour of the company wherein present petitioners are Managing Directors and same has been dishonoured and, therefore, notice under Sec.138 of the Negotiable Instruments Act has been been issued by the company of the present petitioners to the complainant and as argued by the learned counsel for the petitioners, even reply to said notice has not been given by the respondent No.1 which fact has not been denied by the other side. Therefore, the company has no other alternative except to file a criminal complaint and they have filed the same before the learned Judicial Magistrate (First Class) at Pune which has been registered as Criminal Case No.797 of 1996 wherein process has been issued by the court on 17th October, 1996. Present respondent No.1 had appeared through her advocate in the said proceedings. In short, according to Mr.Jhaveri they were holder in due course and legally they were entitled to file the complaint and they have filed it and it is pending before the court at Pune and therefore, at the most, averments made by the complainant in the complaint can be taken as defence at the time of trial before the Court at Pune. But present complaint which has been filed after a lapse of two years and which has been registered as Criminal Case No.3577 of 1998 in the court of learned Judicial Magistrate (First Class) at Surat, that too against a person who has prima-facie nothing to do with the complainant or the complaint is nothing but a counterblast. Therefore, it is an abuse of process of law on the part of complainant-respondent and, therefore, it is required to be quashed and it is a proper stage wherein power under the provisions of

Sec.482 of Code of Criminal Procedure is required to be exercised in view of the judgment delivered by the Apex Court reported in JT 200 (1) S.C. 360.

#. Under the circumstances, complaint in question being Criminal Case No.3577 of 1998 pending before the court of Judicial Magistrate (First Class) at Surat is hereby quashed and set aside. Rule is made absolute.

(R.P.DHOLAKIA,J.)
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